

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASTE ACTION PROJECT,

Plaintiff,

v.

DOUBLE H. SLAUGHTERING, INC. dba
THE BEEF SHOP AND FIVE STAR BEEF,

Defendants.

Case No. 12-05522-BHS

CONSENT DECREE

I. STIPULATIONS

Plaintiff Waste Action Project sent a sixty day notice of intent to sue letter to Defendant Double H. Slaughtering, Inc. dba The Beef Shop and Five Star Beef on April 13, 2012, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Double H. Slaughtering, Inc. dba The Beef Shop and Five Star Beef's facility in Centralia, Washington and seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs.

Counsel for Five Star Beef entered an appearance and an answer to the complaint in this matter. *See* Dkt. 8, 10, 16. Five Star Beef denies any fault, wrongdoing, or liability regarding all claims and alleged violations. Double H. Slaughtering, Inc., dba the Beef Shop never entered an

1 appearance or an answer in this matter.

2 Waste Action Project and Five Star Beef (hereinafter collectively the "Parties") agree that
3 settlement of these matters is in the best interest of the parties and the public, and that entry of this
4 Consent Decree is the most appropriate means of resolving this action.

5 Waste Action Project and Five Star Beef stipulate to the entry of this Consent Decree
6 without trial, adjudication, or admission of any issues of fact or law regarding Waste Action
7 Project's claims or allegations set forth in its complaint and its sixty-day notice.

8 DATED this June 14, 2013

9 FIVE STAR BEEF

WASTE ACTION PROJECT

10
11 By 

By 

Greg Wingard

12 Title: Vice President

Title: Executive Director

13 **II. ORDER AND DECREE**

14 THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of
15 Consent Decree and the foregoing Stipulations of the parties. Having considered the Stipulations
16 and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as
17 follows:

- 18 1. This court has jurisdiction over the parties and subject matter of this action.
- 19 2. Each signator for the parties certifies for that party that he or she is authorized to
20 enter into the agreements set forth below.
- 21 3. This Consent Decree applies to and binds Five Star Beef, Waste Action Project,
22 and their successors and assigns.
- 23 4. This Consent Decree applies to the operation, oversight, or both by Defendant Five
24 Star Beef of its Facility 1721 Airport Road, Centralia, Washington 98531 (the "**Facility**").
- 25 5. This Consent Decree is a full and complete settlement of the claims in the
26 complaint and all other claims known and unknown existing as of the date of entry of this

CONSENT DECREE: No. 12-05522-BHS

Smith & Lowney, p.l.l.c.

Seattle, Washington 98112
(206) 860-2883

1 Consent Decree against Five Star Beef, that could be asserted under the Clean Water Act, 33
2 U.S.C. §§ 1251-1387, arising from operations of the Facility. These claims are released and
3 dismissed with prejudice. Enforcement of this decree is Waste Action Project's exclusive remedy
4 for any violation of its terms. The terms of settlement herein shall survive termination of this
5 Consent Decree.

6 6. This Consent Decree is a settlement of disputed facts and law. It is not an
7 admission or adjudication regarding any allegations by Waste Action Project in this case or of any
8 fact or conclusion of law related to those allegations. It is not evidence of any wrongdoing or
9 misconduct on the part of Five Star Beef.

10 7. The Parties agree to the following terms and conditions in full and complete
11 satisfaction of the claims covered by this decree. Five Star Beef must seek and obtain conditional
12 no exposure certification from the Washington Department of Ecology ("Ecology") for the
13 Facility's National Pollutant Discharge Elimination System permit number WAR012015 (the
14 "*NPDES permit*") at the Facility. Five Star Beef will forward a copy of the conditional no
15 exposure certification to Waste Action Project within fourteen (14) days of receipt. Five Star
16 Beef agrees to comply with all continuing obligations under the conditional no exposure
17 certification. In exchange and in accordance with the terms of the settlement agreement, Waste
18 Action Project agrees to a complete release and dismissal (with prejudice) of claims known and
19 unknown existing as of the date of entry of this Consent Decree against Five Star Beef and its
20 successors and assigns.

21 8. Not later than 30 days after entry of this Consent Decree, Five Star Beef will pay
22 \$5,000.00 (FIVE THOUSAND DOLLARS) to the Rose Foundation for projects to improve the
23 water quality of the Chehalis River watershed as described in **Attachment A to this Consent**
24 **Decree**. A check shall be made to the order of the Rose Foundation for Communities and the
25 Environment, Attn: Tim Little. Payment shall be sent to 1970 Broadway, Suite 600, Oakland, CA
26 94612-2218. Payment shall include the following reference on the check or a cover letter:

1 “Consent Decree, WAP v. Five Star Beef.” A copy of the check and cover letter, if any, shall be
2 sent simultaneously to: Greg Wingard, Waste Action Project, P.O. Box 4832, Seattle, WA 98194.

3 9. Five Star Beef will pay Waste Action Project’s reasonable attorney and expert fees
4 and costs in the amount of \$20,000 (TWENTY THOUSAND DOLLARS). Payment will be
5 made within 30 days of the entry of this decree by check payable and mailed to Smith & Lowney,
6 PLLC, 2317 E. John Street, Seattle, Washington 98112, attn: Knoll Lowney. This payment is full
7 and complete satisfaction of any claims Waste Action Project may have under the Clean Water
8 Act for fees and costs.

9 10. A force majeure event is any event outside the reasonable control of Five Star
10 Beef that causes a delay in performing tasks required by this decree that cannot be cured by due
11 diligence. Delay in performance of a task required by this decree caused by a force majeure event
12 is not a failure to comply with the terms of this decree, provided that Five Star Beef notifies
13 Waste Action Project of the event; the steps that Five Star Beef will take to perform the task; the
14 projected time that will be needed to complete the task; and the measures that have been taken or
15 will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in
16 completing the task.

17 Five Star Beef will notify Waste Action Project of the occurrence of a force majeure event
18 as soon as reasonably possible but, in any case, no later than fifteen days after the occurrence of
19 the event. In such event, the time for performance of the task will be extended for a reasonable
20 period of time following the force majeure event.

21 By way of example and not limitation, force majeure events include

- 22 a. Acts of God, war, insurrection, or civil disturbance;
23 b. Earthquakes, landslides, fire, floods;
24 c. Actions or inactions of third parties over which defendant has no control;
25 d. Unusually adverse weather conditions;
26 e. Restraint by court order or order of public authority;

1 f. Strikes; and

2 g. Litigation, arbitration, or mediation that causes delay.

3 11. This court retains jurisdiction over this matter. And, while this decree remains in
4 force, this case may be reopened without filing fee so that the parties may apply to the Court for
5 any further order that may be necessary to enforce compliance with this decree or to resolve any
6 dispute regarding the terms or conditions of this decree. In the event of a dispute regarding
7 implementation of, or compliance with, this decree, the parties must first attempt to resolve the
8 dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute.
9 Such a meeting should be held as soon as practical but must be held within thirty (30) days after
10 notice of a request for such a meeting to the other party and its counsel of record. If no resolution
11 is reached at that meeting or within thirty (30) days of the notice, whichever occurs first, either
12 party may file a motion with this court to resolve the dispute. The provisions of section 505(d) of
13 the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including
14 reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party,
15 shall apply to any proceedings seeking to enforce the terms and conditions of this Consent
16 Decree.

17 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
18 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
19 to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the
20 U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of
21 this Consent Decree by the parties, Waste Action Project shall serve copies of it upon the
22 Administrator of the U.S. EPA and the Attorney General.

23 13. This Consent Decree takes effect upon entry by the court. It terminates 30 days
24 after the completion of all obligations under this decree.

25 14. Both parties have participated in drafting this decree.

26 15. This Consent Decree may be modified only upon the approval of the court.

1 16. If for any reason the court should decline to approve this Consent Decree in the
2 form presented, this Consent Decree is voidable at the discretion of either party. The parties
3 agree to continue negotiations in good faith in an attempt to cure any objection raised by the court
4 to entry of this Consent Decree.

5 17. Notifications required by this Consent Decree must be in writing. The sending
6 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
7 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
8 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other
9 communication regarding this Consent Decree to be valid, it must be delivered to the receiving
10 party at the addresses listed below or to any other address designated by the receiving party in a
11 notice in accordance with this paragraph 16.

12 **if to WAP:**

13 Waste Action Project
14 P.O. Box 4832
15 Seattle, WA 98194
16 email: gwingard@earthlink.net

17 **and to:**

18 Smith & Lowney PLLC
19 2317 East John St.
20 Seattle, WA 98112
21 email: knoll@igc.org

22 **if to Five Star Beef:**

23 Five Star Beef
24 P.O. Box 490
25 Parma, ID 83660

26 **and to:**

 Scheer & Zehnder
 701 Pike Street, Suite 2200
 Seattle, WA 98101
 Email: ascisciani@scheerlaw.com
 mquigg@scheerlaw.com

1 A notice or other communication regarding this Consent Decree will be effective when
2 received unless the notice or other communication is received after 5:00 p.m. on a business day,
3 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the
4 next business day. A notice or other communication will be deemed to have been received: (a) if
5 it is delivered in person or sent by registered or certified mail or by nationally recognized
6 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
7 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a
8 change in address for which no notice was given, then upon that rejection, refusal, or inability to
9 deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing
10 notice or other communication regarding this Consent Decree.

11
12
13 DATED this 5 day of August, 2013.

14
15
16 
17 HON. BENJAMIN H. SETTLE
UNITED STATES DISTRICT JUDGE

18 PRESENTED BY:

19
20 SCHEER & ZEHNDER LLP

SMITH & LOWNEY PLLC

21 By/s/ Anthony R. Scisciani
22 Anthony R. Scisciani, WSBA No.
32342
23 ascisciani@scheerlaw.com
24 Matthew F. Quigg, WSBA No. 41116
mquigg@scheerlaw.com
25 Attorneys for Defendant FIVE STAR
BEEF, INC.

By /s/ Elizabeth H. Zultoski
Elizabeth H. Zultoski
Knoll Lowney
Attorneys for Plaintiff
Waste Action Project

ATTACHMENT A

1970 BROADWAY, SUITE 600, OAKLAND, CA 94612-2218
ROSE@ROSEFDN.ORG



WWW.ROSEFDN.ORG

OFFICE: 510.658.0702
FAX: 510.658.0732

6/13/13

Sarah Lu
Environment & Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: Waste Action Project v. Five Star Beef (12-05522-BHS)

Dear Ms. Lu,

This letter is intended to provide assurance that I have received the proposed Consent Decree between the Waste Action Project and Five Star Beef and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

- 1) I understand that the Rose Foundation should receive funds from Five Star Beef as specified in the Consent Decree.
- 2) The Rose Foundation shall only use these Five Star Beef funds to support projects intended to improve the water quality of the Chehalis River watershed, with a preference towards supporting a project in the Centralia area. None of the funds shall be used to support political lobbying activities.
- 3) After the funds have been disbursed, the Rose Foundation shall send a report to the Justice Department, the court and the parties describing how the funds were utilized and demonstrating conformance with the nexus of the Consent Decree.

Rose Foundation for Communities and the Environment

The Rose Foundation is a 501(c)(3) public charity (tax ID#94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations.
- Work directly in schools and in the community to encourage environmental stewardship and civic participation.
- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

Within this broad range of activities, all of the Rose Foundation's work revolves around one or more of the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Levy and Powers are posted on the Foundation's website www.rosefdn.org.

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or tlittle@rosefdn.org.

Sincerely,



Tim Little, Executive Director